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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 154

ADAM PIETRZAK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 481-485) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on April 20, 1951 (R. 485). A rehearing was denied June 1, 1951 (R. 489). The petition for a writ of certiorari was filed on June 28, 1951. The jurisdiction of this Court is invoked under 28

U.S.C. 1254(1). See also Rules 37(b)(2) and 45 (a), F.R. Crim. P.

QUESTION PRESENTED

Whether the trial court erred in denying petitioner's motion to quash the indictment based on the contention that it described an offense cognizable under 18 U.S.C. 1501, rather than under 18 U. S. C. 111, which was cited therein.

STATUTES INVOLVED

18 U.S.C. 111 provides:

> Assaulting, resisting, or impeding certain officers or employees.
>
> Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both.
>
> Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

18 U.S.C. 1114 referred to in section 111 provides in pertinent part:

> Protection of officers and employees of the United States.
>
> Whoever kills * * * any United States marshal or deputy marshal or person employed

> to assist such marshal or deputy marshal * * * while engaged in the performance of his official duties, or on account of the performance of his official duties, shall be punished as provided under sections 1111 and 1112 of this title.

Section 18 U.S.C. 1501 provides:

> Assault on process server.
>
> Whoever knowingly and willfully obstructs, resists, or opposes any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any legal or judicial writ or process of any court of the United States, or United States commissioner; or
>
> Whoever assaults, beats, or wounds any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process—
>
> Shall, except as otherwise provided by law, be fined not more than $300 or imprisoned not more than one year, or both.

STATEMENT

On February 25, 1949, an indictment was filed charging petitioner under 18 U.S.C. 111, *supra,* with assaulting and threatening Jack F. Peeples, a United States deputy marshal, with a butcher knife, and with resisting, opposing, impeding, intimidating, and interfering with the latter while he was attempting, in connection with his official duties, to serve a civil process (R. 4-6). A motion

to quash the indictment, on the ground that the facts alleged constituted a misdemeanor specifically proscribed by 18 U.S.C. 1501, *supra*, and could not also be punishable as a felony under 18 U.S.C. 111, *supra*, was denied (R. 9). After a trial by jury, petitioner was found guilty as charged, and was sentenced to one year in prison and fined $300 (R. 16-17). On appeal, the judgment was affirmed (R. 485).

The evidence established that between May and December 1948, United States Deputy Marshal Peeples made numerous unsuccessful attempts to serve a summons in a civil action on petitioner's parents (R. 43, 51-54, 86-87). At one time, Peeples obtained entry to the apartment where petitioner resided with his parents, but petitioner denied his identity and that of his mother (R. 50-54, 86-87).

On December 27, 1948, having noticed an "apartment for rent" sign on the front door of the Pietrzak premises, Peeples had his wife pose as a prospective tenant (R. 55). While petitioner's mother was showing Peeples' wife the garage apartment, Peeples came to the back door of the apartment and attempted to serve the summons on the mother, presenting his official identification (R. 55-58, 164-165, 180-182). As Peeples stood in the threshold of the apartment, the door "flew open" behind him, and he heard petitioner say, "get the hell out of there or I will slice you to pieces" (R. 58, 165). Peeples turned and saw peti-

tioner behind him. Petitioner had his foot behind the bottom edge of the screen door, and had his right hand raised with a butcher knife in it (R. 58, 111-114, 121, 171-173). Even after Peeples presented his badge as well as his identification, petitioner continued to threaten him with the knife, and to reiterate his threat (R. 59-60, 166, 187-188). Peeples reminded petitioner that he was threatening a federal officer's life and hindering the process of a federal court. Peeples also told petitioner that he placed him under arrest. Petitioner replied that he could not be arrested without a warrant and that he would resist arrest. Petitioner pushed Peeples, and again threatened to slice him to pieces with the butcher knife (R. 61-62, 127, 167-168).

Peeple's wife went to a neighbor's house to telephone for assistance (R. 64, 168). The neighbors testified that Mrs. Peeples was in an excited state and told them her husband was being attacked with a butcher knife (R. 417, 429, 439, 445).

A few minutes later, petitioner allowed the marshal to effect service on his mother (R. 133-136). On the arrival of two other deputy marshals and a deputy sheriff, Peeples arrested petitioner (R. 139-143).

ARGUMENT

Petitioner's sole contention is that, since the indictment charged an assault on a United States deputy marshal while he was performing a special type of "official duties," *i.e.*, serving or attempting

to serve a judicial writ, the indictment should have been founded on 18 U.S.C. 1501, *supra*, which specifically proscribes the offense of assaulting a process server.

However, while section 1501 is applicable to punish an assault on any process server, whether a government employee or not, 18 U.S.C. 111 specifically relates to an assault on one of the government officers and employees of the limited class set out in 18 U.S.C. 1114, *supra*, including "any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal." Section 111 is clearly intended to supplement section 1114, and to provide additional protection for "officers and employees of the United States" of the types defined, "while engaged in the performance of [their] official duties."

The language of the two sections refutes petitioner's contention that the former is a "general statute" while the latter is a "specific statute." Section 111 is very specific in the kind of offense which it proscribes, and every element thereof is supported by evidence in this record. The facts of this offense are typically within the letter of section 111. Cf. *Garza* v. *United States*, 159 F. 2d 413 (C.A. 5); *Cook* v. *United States*, 117 F. 2d 374 (C.A. 5); *Sparks* v. *United States*, 90 F. 2d 61 (C.A. 6). The fact that this government officer was assaulted while in the commission of official duties of a type protected also by another section

of the criminal code, does not require an implied exception to be read into section 111. There is no logical distinction between an assault on a United States deputy marshal who, for example, enters premises for the purpose of making an arrest (cf. *Cook* v. *United States, supra*), and an assault on the same officer while he is attempting to serve a judicial writ.

The most that petitioner's argument can avail is to show that the prosecutor could exercise an option to proceed under either of these code sections.

Aside from the fact that section 111 specifically includes assaults on United States deputy marshals within its express terms, it also prescribes a more severe punishment for one who "in the commission of any such acts uses a deadly or dangerous weapon." This additional element present in the instant case supports the particular applicability of section 111, rather than section 1501, to the facts charged in the indictment.

CONCLUSION

The case involves no conflict or question of general importance. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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